Supreme Court, U.S.
FILED

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No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

LYNN ALLAN JENKINS I.,
Petitioner,
V.

EIGHTH JUDICIAL DISTRICT'S CLERK OF THE COURT, SHANA WITBECK AND LEAD DEPUTY CLERK CHERYL WEEKS,
Respondents.

Petition for Writ of Certiorari to the Supreme Court of Utah

PETITION FOR WRIT OF CERTIORARI

LYNN ALLAN JENKINS I.,
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Three East 2750 South
Bountiful, Utah 84010
(801) 299-1520

62 pp

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QUESTIONS PRESENTED

1. Do Utah's Court Clerks have a mandatory duty to comply with Utah's Rules of Civil Procedures, Code of Judicial Administration, and/or any other Constitutional or statutory law, when presented with pleading(s) for docketing and entry?

2. Did the Utah Supreme Court err in not granting petitioner's constitutional right to appeal from the Utah Courts of Appeal?

3. Did the Honorable A. Lynn Payne fail to comply with Utah Code of Judicial Conduct?

LIST OF PARTIES

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Utah Supreme Court to review the merits appears at Appendix A to the petition and is unpublished.

The opinion of the Utah Court of Appeals appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the Utah Supreme Court decided my case was November 21, 1996. A copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Utah Supreme Court's jurisdiction in this matter is pursuant to the Utah Constitution Article VIII, Sections 3 and 5, Utah Code Annotated, § 78-3-30, and Utah Rules of Civil Procedures, Rule 65B(e)(2)(B), as amended.

1. Do Clerks of the Court have a mandatory duty to comply with Utah's Rules of Civil Procedures, Code of Judicial Administration, and/or any other Constitutional or statutory law, when

presented with pleading(s) for docketing and entry?

It is alleged that this is a question of "first impression", for the State of Utah. See: Riverton Citizens for Constitutional Government v. Beckstead, 631 P.2d 885 (Utah 1981), at footnote 4:

> We express no opinion on whether the mandamus remedy currently available under U.R.C.P. Rule 65B(b)(3) [amended 1994] or any other remedy would be available to compel action by a clerk who declined to perform his or her statutory function in time for the proponents of a petition to meet the deadline under Utah Code Annotated §20-11-24.

and UTAH CODE OF JUDICIAL ADMINISTRATION

Rule 3-302. Clerk of the Court.

Intent: To describe the role of the Clerk of the Court. To specify the procedure by which the Clerk of the Court is selected.
Applicability: This rule shall apply to the trial courts of record.

Statement of the Rule:

(1) The Clerk of the district and juvenile courts shall be appointed by the court executive with the concurrence of a majority of the judges assigned to that court location. In locations of the district court administered by contract with the

administrative office of the courts, the elected county clerk shall serve as Clerk of the Court.

(2) The Clerk of the Court shall:

(A) take charge of and safely keep the court seal;

(B) take charge of and safely keep or dispose of, according to law, all books, papers and records filed or deposited in the Clerk's Office;

(C) issue all notices, process and summonses where authorized by law;

(D) keep a record of all orders, judgments and decrees as required by law and this Code;

(E) keep minutes of court proceedings;

(F) keep a fee record as provided in this Code;

(G) keep records of jurors' services as provided in this Code;

(H) keep records of witnesses' attendance as provided in this Code;

(I) keep a record of executions as provided in this Code;

(J) take and certify acknowledgments and administer oaths;

(K) keep a record of fines, penalties, costs, and forfeitures as required by law and this Code;

(L) prepare revenue reports, reconcile accounting ledgers to bank statements, maintain and serve as custodian of trust accounts and perform such other accounting duties as assigned by the court executive;

(M) keep a record of court exhibits and ensure the safekeeping of exhibits;

> (N) supervise such deputy clerks as required to perform the duties specified in this rule;
>
> (O) keep such other records and perform such other duties as assigned by the court executive in accordance with applicable law and the provisions of this Code.

2. Did the Utah Supreme Court err in not granting petitioner's constitutional right to appeal from the Utah Courts of Appeal? The Utah Constitution Article VIII, Section 5 provides:

> The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

3. Did the Honorable A. Lynn Payne fail to comply with Utah Code of Judicial Conduct? It is not the first time Judge Payne has failed to do his duty as a judge, see: STATE v. PAYNE, 892 P.2d 1032 (Utah 1995);

> We agree with the State that the district court "failed to perform an act required by law as a duty of office" when it delegated the issue...,

and the Utah Code of Judicial Conduct provides:

Canon 3 B., Adjudicative Responsibilities.

> (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or permitted by rule, or transfer to another court occurs.
>
> ...
>
> (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit, and shall use all reasonable efforts to deter, staff, court officials and others subject to judicial direction and control from doing so. A judge should be alert to avoid behavior that may be perceived as prejudicial.
>
> ...
>
> (7) A judge shall accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law. Except as authorized by law, a judge shall neither initiate nor consider, and shall discourage, ex parte or other communications concerning a pending or impending proceeding. A judge may consult with the court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges provided that the judge

does not abrogate the responsibility to personally decide the case pending before the court. No communication respecting a pending or impending proceeding shall occur between the trial judge and an appellate court unless a copy of any written communication or the substance of any oral communication is provided to all parties. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the court if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. A judge may, with the consent of the parties either in writing or on the record, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

...

Canon 3C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials and others subject to judicial direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance

of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments, shall exercise the power of appointment impartially and on the basis of merit, and shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

STATEMENT OF THE CASE

This petition involves a civil action now pending before the Honorable A. Lynn Payne, Jr., in the Eighth Judicial District, Uintah County, Utah, Civil No. 930800100CN. The plaintiffs are H. Arvene Cooper, and his now deceased wife, Maurice N. Cooper, being represented by John C. Beaslin Esq., ("plaintiffs"); the defendants are M&J Construction Inc., a defunct Utah corporation, Edwin M. Higley and Afton C. Higley, his wife, being represented by Philip R. Hughes Esq., ("defendants"); and intervenor Lynn A. Jenkins I., pro se, ("petitioner").

The cause of action was filed by the plaintiffs on March 16, 1993. The complaint requested:

FIRST CAUSE OF ACTION

(1). $30,812.46 unpaid principal balance;
(2). $14,800.11 interest to and including January 1, 1993;
(3). 8% per annum on the principal balance until paid in full;
(4). Court to declare Exhibit "H", to complaint to be null and void;
(5). determine the Agreement dated December 30, 1986, is null and void for fraudulent amounts;
(6). determine M&J's President Edwin M. Higley had responsibility of determining correct balance due and owing; and
(7). attorney fees and cost.

SECOND CAUSE OF ACTION

(1). Court determine B.L.M. Permit owned by plaintiffs.

THIRD CAUSE OF ACTION

(1). Court determine personal liability of Edwin M. Higley and Afton C. Higley for taking real property in their names instead of M&J;
(2). determine M&J signed the Uniform Real Estate Contract Exhibit "B", to complaint; and
(3). for such other and further relief court seems just and proper.

June 10, 1993, after their attorney, John Michael Coombs filed a notice of withdrawal of

counsel the defendants, *pro se*, filed their answer and requested;

COUNTERCLAIM

(1). Defendants had collectively paid or caused to be paid over-payments [in] the amount of $85,872.56;

(2). plaintiffs to give Higleys a Warranty Deed to approximately 15.26 acres of Uintan County property, plus 19 shares of water, together with a title insurance policy on Uintah County property in the amount of $220,000.00;

(3). judgment against plaintiffs in the amount of $85,872.56, plus interest, at the rate of 12% per annum, commencing December 30, 1986;

(4). defendants have assigned all of their rights title and interest to Lynn Allan Jenkins I., pursuant to an "Absolute Assignment" dated July 30, 1991, and Quit Claim Deeds from Higleys to Jenkins, on November 1, 1991;

(5). dismissal as proper parties were not named;

(6). no cause of action upon which relief can be granted;

(7). complaint be dismissed with prejudice; and

(8). counterclaim costs.

September 3, 1993, plaintiffs assigned all of their rights, title and interests of this cause of action to their son Nelden Cooper, he being "responsible for cost, attorney fees, and any other cost relating to the lawsuit".

June 14, 1994, Nelden Cooper filed his "Notice of Interest" without a certificate of service.

July 19, 1994, Judge John R. Anderson, signed an order for filing an amended complaint, without a certificate of service being executed nor addressed to the defendants.

July 21, 1994, plaintiffs filed "Motion For Leave of Court to File Amended Complaint", without a certificate of service addressed to the defendants.

July 21, 1994, plaintiffs filed their amended complaint, without either a certificate of service addressed to defendants, nor exhibits attached. The plaintiffs are now seeking:

FIRST CAUSE OF ACTION

(1). $30,812.46 unpaid principal balance;
(2). $14,800.11 interest--Based on a Daily accrual of interest, Or $59,010.82--;
(3). 8% per annum on the principal balance until paid in full;
(4). declaration Exhibit "H", to complaint to be null and void;
(5). determine the Agreement dated December 30, 1986, is null and void for fraudulent amounts;
(6). determine M&J's President Edwin M. Higley had responsibility of determining correct balance due and owing; and
(7). attorney fees and cost.

SECOND CAUSE OF ACTION

(1). Determine amount of damages for recording deeds, EXHIBITS "G" AND "k"; and
(2). B.L.M. Permit owned by plaintiffs.

THIRD CAUSE OF ACTION

(1). Determine personal liability of Edwin M. Higley and Afton C. Higley for taking real property of (sic) Uintah Co., in their names before M&J had paid all the money it was obligated to pay;
(2). determine the personal (sic) liability of M&J;
(3). determine M&J signed (sic) the Uniform Real Estate Contract Exhibit "B", to complaint;
(4). determine Edwin M. Higley and Afton C. Higley, individually (sic) signed Memorandum Agreement and Exchange Agreement (Exhibit "C");
(5). for such other and further relief court seems just and proper; and
(6). "All exhibits on file with the original Complaint shall remain the same and are incorporated herein by reference thereto."

September 5, 1994, plaintiffs filed "Request for Hearing", without certificate of service to the defendants, requesting "a trial ... approximately two days."

August 7, 1995, Judge Anderson, upon his own motion, recused himself from the case since he

still had an on going partnership with the plaintiffs' attorney John C. Beaslin, and had failed to notify the defendants of this conflict of interest. Further Judge Anderson ordered that defendants were to be given a "New Trial", a copy of his "Memorandum Decision", is attached hereto as Appendix C. The Eighth Judicial District Court has only two judges, the other being Judge Payne.

August 22, 1995, Judge Payne granted the intervenor the right to intervene in the civil cause of action.

On or about September 20, 1995, the plaintiffs were served with petitioner's counterclaim seeking:

> (1) Judgment against plaintiffs in the total amount of $85,872.56 plus interest thereon at the rate of 12% per annum as of December 30, 1986;
>
> (2) Judgment for 2,070 shares of Ouray Park Irrigation Company's water stock;
>
> (3) A Warranty Deed for 215 acres presently held by the plaintiffs' agent; and
>
> (4) Attorneys fees; cost of suit and such other relief the Court deems proper.

October 31, 1995, the court held its hearing on the issues of the "New Trial" and stated its bench rulings of which no final order has been submitted by the plaintiffs as ordered by the court.

February 14, 1996, after plaintiffs had failed to respond in any manner to the intervention counterclaim, petitioner submitted to the

respondents for entry of a default judgment the following:

> I. "NOTICE OF DEFAULT", pursuant to Rule 55, Utah Rules of Civil Procedures, for plaintiffs' failure to respond to petitioner's counterclaim;
>
> II. "DEFAULT JUDGMENT" as prayed for in the counterclaim; and then
>
> III. Respondent Weeks' stated to petitioner that the Eighth Judicial District's procedures required a single document titled "CERTIFICATE OF DEFAULT AND DEFAULT JUDGMENT" so petitioner prepared two new judgments styled the same. One being without intervener's signature or mailing certification and the other with his signature and mailing certification.

Petitioner returned to the Clerk's office about 1:45 pm. and was informed by respondent Weeks that Judge Payne had intervened and told her not to enter any default judgment.

The "COURT'S DOCKET" is attached to the petition as Appendix D, and in its pertinent part is the only court record as to why a default judgment was not entered:

> 2/14/96 LYNN JENKINS SUBMITTED A DEFAULT AND DEFAULT JUDGMENT TO THE COURT. THE CLERK CHECKED (sic) THE DOCKET TO DETERMINE WHETHER OR NOT AN ANSWER HAD BEEN FILED. THE CLERK NOTED THAT THERE WAS A A (sic) HEARING HELD ON 2/5/96 AND THAT THERE IS ANOTHER

> HEARING SET FOR MAY 23, 1996. THERE WAS ALSO AN ANSWER FILED ON 1/29/96 BUT THE DOCKET DOES (sic) NOT SPECIFY WHO FILED THE ANSWER. AS THE CLERK WAS LOOKING FOR THE FILE TO DETERMINE WHETHER OR NOT THE DEFAULT AND DEFAULT JUDGMENT SHOULD ENTER, JUDGE PAYNE RECESSED FROM COURT AND CAME INTO CLERK'S OFFICE. THE CLERK ASKED JUDGE PAYNE ABOUT THE CASE AND [he] INDICATED THIS MATTER WAS SET FOR HEARING AND ADVISED THE CLERK NOT TO ENTER THE DEFAULT AND DEFAULT HEARING (sic) AT THIS TIME.
> 2/14/96 MR. JENKINS RETURNED TO THE CLERK'S OFFICE AND THE CLERK INFORMED HIM THAT THE DEFAULT AND DEFAULT JUDGMENT HAD BEEN RECEIVED IN (sic) BY THE COURT BUT WOULD NOT BE ISSUED OR ENTERED AT THIS TIME PENDING THE HEARING ON 5/23/96.

Petitioner sought from the Utah Court of Appeals an order of mandate to the Clerks requiring them to enter, nunc pro tunc, intervener's February 14, 1996, Notice of Default and Default Judgment; or Certificate of Default and Default Judgment; supra, items "I", "II" or "III".

REASONS FOR GRANTING THE PETITION

The petitioner by law is entitled to the relief sought in his administrative petition to the Utah Court of Appeals. Further the Utah trial court lacks jurisdiction under the claimed contract of the plaintiffs, Exhibit B. to their complaint and purported amended complaint concerning Davis and Weber County property that is within the jurisdiction of the Second Judicial District, which was extinguished by Warranty

Deeds of December 26, 1977, and as recorded in August 1978. Not only have the plaintiffs been paid in full for their Uintah County property, they have failed to transfer all that defendants had bargained and paid for which was assigned to the petitioner, as a bona fide purchaser for value.

The issue of the B.L.M. Sheep permit is now pending before the United States Department of the Interior, Office of Hearing and Appeals, Arlington Virginia, Appeal No. IBLA 95-489, (UT-08-93-01), and the Utah courts lacks jurisdiction over petitioner's base property.

Petitioner's counterclaim rights of due process and equal protection by not having the default and default judgment against the plaintiffs entered has compounded litigation costs with other parties that have stolen petitioner's property under color of the Utah court's rulings.

If the plaintiffs believe the filings of the petitioner were in error then they are responsible to follow Utah's Rules of Civil Procedures, Code of Judicial Administration, Rules of Appellate Procedure, Constitutional and statuary law, not Judge Payne's ex parte communication to his Clerks on their behalf.

CONCLUSION

Petitioner finds it interesting, to say the least, how plaintiffs can file their complaints yet fail to do what the Utah courts have ordered, i.e. prepare an order of the court's October 31, 1995, bench rulings and timely respond to the

intervention counterclaim. Judge Anderson granted a "New Trial", however now it appears the Utah court has abused its discretion for a *"New Trial"* as for the due process rights of the petitioner, the court has shown exceptional privilege to the plaintiffs, has compounded the facts in the civil case far beyond any court rule or statute or equity.

WHEREFORE, petitioner had requested: (1) that the Utah Court of Appeals issue an Extraordinary Writ, requiring respondents to appear and defend their actions; (2) that the Court proceed to hear and determine the legality of such actions; (3) a determination that the Clerks have a lawful duty to the petitioner and the Clerks are to enter the default and default judgment against the plaintiffs Coopers, nunc pro tunc, as of February 14, 1996; (4) that petitioner have a judgment for his costs; (5) and for such other relief the Court deems proper.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lynn Allan Jenkins I.,
Petitioner pro se

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF UTAH

-ooOoo-

Lynn A. Jenkins,
Plaintiff and Appellant,
v.
Eighth District Court Clerks,
Shana Witbeck and Cheryl Weeks,
Defendants and Appellees.

No. 960232
930800100

-ooOoo-

ORDER

Appellee's motion for summary affirmance of the judgment appealed in this matter is hereby granted on the ground the issues raised are so insubstantial as not to merit further proceedings and consideration by this court. Utah R. App. P. 10(a)(2).

11/21/96
Date

s/
Michael D. Zimmerman
Chief Justice
For the Court

APPENDIX B

IN THE UTAH COURT OF APPEALS

---ooOoo---

Lynn A. Jenkins,
Petitioner,

v.

Eighth District Court Clerks, Shana Witbeck and Cheryl Weeks,
Respondents.

ORDER
Case No. 960101-CA

Before Judges Bench, Greenwood, and Wilkins.

This matter is before the court pursuant to a petition for extraordinary relief, seeking an order compelling respondents to enter an order of default in the trial court.

IT IS HEREBY ORDERED that the petition is denied.

Dated this 11th day of April, 1996.

/s
Russell W. Bench, Judge

/s
Pamela T. Greenwood, Judge

/s
Michael J. Wilkins, Judge

APPENDIX C

IN THE EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR UINTAH COUNTY, STATE OF UTAH

H. ARVENE COOPER and MAURICE N. COOPER,

Plaintiffs,

vs.

M&J CONSTRUCTION, INC., a UTAH Corporation, EDWIN M. HIGLEY, aka EDWIN HIGLEY, and AFTON C. HIGLEY, husband and wife, Individually,

Defendants.

MEMORANDUM DECISION

CASE NO. 930800100

This Court signed and entered a Judgment in favor of the Plaintiffs and against the Defendants in whole and part on April 12, 1995. This Court has further, in various supplemental Rulings and in Findings and Rulings, denied Defendants' Motions for additional Findings for failure to join an indispensable party and as set forth in the Ruling and Supplemental Findings entered by this Court on March 24, 1995 and in supplemental Ruling, May 9, 1995, which Findings and Rulings are incorporated herein by this reference.

There were new issues raised before the

Court and the Defendants' continuing Motion for a New Trial on the basis of the Judge's disqualification under Rule 63(b) and a fair summary of the record made at a telephone conference hearing on May 23, 1995 was as follows: That is, the Court was concerned with the issue raised concerning the Judge's failure to indicate on the record an ownership interest in a building with Plaintiffs' counsel.

Upon the direction of the Court, counsel for the Plaintiff filed an Affidavit and Memorandum setting forth the fact quite clearly that the Plaintiffs' had not retained Mr. Beaslin until after the termination of any relationship between Plaintiffs' counsel and this Court.

The remaining issue in the Court's mind regarding the challenge of Judicial Ethics concerning disqualification for financial interest. The Court directed counsel for both parties to fully brief the matters and file Memorandums with the Court. Mr. Beaslin filed his Memorandum on or about July 19, 1995 and two weeks have passed and Mr. Hughes has not filed his Memorandum. The matter appears to be ripe for decision.

While the attorney for the Defendants has not filed a specific Affidavit of Bias or Prejudice, he has raised the issue as one issue that should have required the Judge's disclosure prior to proceeding to trial so that an intelligent decision could be made as to whether to file an Affidavit or at least request that a jury be involved in the case.

The Utah Code of Judicial Conduct, Cannon 4

D (1) provides as follows:

> D. **Financial Activities** (1) (b): "A Judge shall not engage in financial dealings that: .....(b) involve the Judge in frequent transactions or business relationships with those lawyers or other persons likely to come before the Court on which the Judge serves....."

The factual findings of the Court were as represented by the Court to be in substance that the Court in fact owns a proprietary interest in a building in which the attorney for the Plaintiff, Mr. Beaslin, also owns and (sic) interest and is a tenant in the partnership effort of his practice of law.

The Court is of the opinion that because these facts and the application of the particular provision of the Code of Judicial Conduct may create an appearance on the part of others and in particular of the Defendants in this case of some degree of bias or prejudice the Court in fact had a duty to disclose that relationship prior to the commencement of Trial.

For the foregoing reasons, Defendants should be granted a new trial, all pending Motions are to be assigned to another Judge, and this Court will recuse.

DATED this 7 day of August, 1995.

BY THE COURT:

/s
JOHN R. ANDERSON, DISTRICT COURT JUDGE

APPENDIX D

"TRIAL COURT'S DOCKET", February 14, 1996

2/14/96 LYNN JENKINS SUBMITTED A DEFAULT AND DEFAULT JUDGMENT TO THE COURT. THE CLERK CHECKED (sic) THE DOCKET TO DETERMINE WHETHER OR NOT AN ANSWER HAD BEEN FILED. THE CLERK NOTED THAT THERE WAS A A (sic) HEARING HELD ON 2/5/96 AND THAT THERE IS ANOTHER HEARING SET FOR MAY 23, 1996. THERE WAS ALSO AN ANSWER FILED ON 1/29/96 BUT THE DOCKET DOES (sic) NOT SPECIFY WHO FILED THE ANSWER. AS THE CLERK WAS LOOKING FOR THE FILE TO DETERMINE WHETHER OR NOT THE DEFAULT AND DEFAULT JUDGMENT SHOULD ENTER, JUDGE PAYNE RECESSED FROM COURT AND CAME INTO CLERK'S OFFICE. THE CLERK ASKED JUDGE PAYNE ABOUT THE CASE AND [he] INDICATED THIS MATTER WAS SET FOR HEARING AND ADVISED THE CLERK NOT TO ENTER THE DEFAULT AND DEFAULT HEARING (sic) AT THIS TIME.
2/14/96 MR. JENKINS RETURNED TO THE CLERK'S OFFICE AND THE CLERK INFORMED HIM THAT THE DEFAULT AND DEFAULT JUDGMENT HAD BEEN RECEIVED IN (sic) BY THE COURT BUT WOULD NOT BE ISSUED OR ENTERED AT THIS TIME PENDING THE HEARING ON 5/23/96

APPENDIX E

UTAH CONSTITUTION

ARTICLE I

Section 1. [Inherent and inalienable rights.]

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Section 3. [Utah inseparable from the Union.]

The State of Utah is an inseparable part of the Federal Union and the Constitution of the United States is the supreme law of the land.

Section 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

Section 11. [Courts open - Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be

barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Section 18. [Attainder - Ex post facto laws - Impairing contracts.]

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

Section 24. [Uniform operation of laws.]

All laws of a general nature shall have uniform operation.

Section 26. [Provisions mandatory and prohibitory.]

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

Section 27. [Fundamental rights.]

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

ARTICLE VIII

Section 3. [Jurisdiction of Supreme Court.]

The Supreme Court shall have original jurisdiction to issue all extraordinary writs and to answer questions of state law certified by a court of the United States. The Supreme Court

shall have appellate jurisdiction over all other matters to be exercised as provided by statute, and power to issue all writs and orders necessary for the exercise of the Supreme Court's jurisdiction or the complete determination of any cause.

Section 5. [Jurisdiction of district court and other courts - Right of appeal.]

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

APPENDIX F.

Utah Code Annotated

§ 78-3-30.
Duties of the clerk of the district court. The clerk of the district court shall:

(1) take charge of and safely keep the court seal;

(2) take charge of and safely keep or dispose of all books, papers, and records filed or deposited with the clerk, and all other records required by law or the rules of the Judicial Council;

(3) issue all notices, processes, and summonses as authorized by law;

(4) keep a record of all proceedings, actions, orders, judgments, and decrees of the court;

(5) take and certify acknowledgments and administer oaths;

(6) supervise the deputy clerks as required to perform the duties of the clerk's office; and

(7) perform other duties as required by the presiding judge, the court executive, applicable law, and the rules of the Judicial Council. (emphasis add).

APPENDIX G

Utah Rules of Civil Procedures:

Rule 54. Judgments; costs.

(a) Definition; form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

...

(c) Demand for judgment.

(1) Generally. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be given for or against one or more of several claimants; and it may, when the justice of the case requires it, determine the ultimate rights of the parties on each side as between or among themselves.

(2) Judgment by default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

Rule 55.

(a) Default.

(1) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter his default.

(2) Notice to party in default. After the entry of the default of any party, as provided in Subdivision (a)(1) of this rule, it shall not be

necessary to give such party in default any notice of action taken or to be taken or to serve any notice or paper otherwise required by these rules to be served on a party to the action or proceeding, except as provided in Rule 5(a), in Rule 58A(d) or in the event that it is necessary for the court to conduct a hearing with regard to the amount of damages of the nondefaulting party.

(b) Judgment. Judgment by default may be entered as follows: (1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, and the defendant has been personally served otherwise than by publication or by personal service outside of this state, the clerk upon request of the plaintiff shall enter judgment for the amount due and costs against the defendant, if he has been defaulted for failure to appear and if he is not an infant or incompetent person.

(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, counterclaimants, cross-clai-

mants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment against the state or officer or agency thereof. No judgment by default shall be entered against the state of Utah or against an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. (emphasis added).

Rule 58A. Entry.

...

(b) Judgment in other cases. Except as provided in Subdivision (a) hereof and Subdivision (b)(1) of Rule 55, all judgments shall be signed by the judge and filed with the clerk.

(c) When judgment entered; notation in register of actions and judgment docket. A judgment is complete and shall be deemed entered for all purposes, except the creation of a lien on real property, when the same is signed and filed as herein above provided. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

(d) Notice of signing or entry of judgment. The prevailing party shall promptly give notice of the signing or entry of judgment to all other parties and shall file proof of service of such notice with the clerk of the court. However, the time for filing a notice of appeal is not affected by the notice requirement of this provision.

(e) Judgment after death of a party. If a party dies after a verdict or decision upon any issue

of fact and before judgment, judgment may nevertheless be rendered thereon.

Rule 65B(e) provides in pertinent part as follows:

Wrongful use of judicial authority or failure to comply with duty.

(1) Who may petition. A person aggrieved or whose interests are threatened by any of the acts enumerated in this paragraph (e) may petition the court for relief.

(2) Grounds for relief. Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; or (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled.

Rule 77. District courts and clerks.

(a) District courts always open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and hearings; orders in chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers without the attendance of the clerk or other court

officials and at any place within the state, either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the county wherein the matter is pending without the consent of all the parties to the action affected thereby.

(c) Clerk's office and orders by clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays. **All motions and applications in the clerk's office** for issuing mesne process, for issuing final process to enforce and execute judgments, **for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk;** but his action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of orders or judgments. At the time of presenting any written order or judgment to the court for signing, the party seeking such order or judgment shall deposit with the clerk sufficient copies thereof for mailing as hereinafter required. Immediately upon the entry of an order or judgment the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers. Lack of notice of the entry by the clerk does not affect the time to appeal or relieve or authorize the court

to relieve a party for failure to appeal within the time allowed.

(e) No fee where copies furnished. In every case where a copy of the pleadings, or other papers is to be certified, neither the sheriff, constable nor clerk shall charge or receive any fee for making such copy when the same is furnished to the officer by the party. (emphasis added).

APPENDIX H

Utah Code of Judicial Administration:

Rule 3-302. Clerk of the Court.

(1) The Clerk of the district and juvenile courts shall be appointed by the court executive with the concurrence of a majority of the judges assigned to that court location. In locations of the district court administered by contract with the administrative office of the courts, the elected county clerk shall serve as Clerk of the Court.

(2) The Clerk of the Court shall:

(A) take charge of and safely keep the court seal;

(B) take charge of and safely keep or dispose of, according to law, all books, papers and records filed or deposited in the Clerk's Office;

(C) issue all notices, process and summonses where authorized by law;

(D) keep a record of all orders, judgments and decrees as required by law and this Code;

(E) keep minutes of court proceedings;

(F) keep a fee record as provided in this Code;

(G) keep records of jurors' services as provided in this Code;

(H) keep records of witnesses' attendance as provided in this Code;

(I) keep a record of executions as provided in this Code;

(J) take and certify acknowledgments and administer oaths;

(K) keep a record of fines, penalties,

costs, and forfeitures as required by law and this Code;

(L) prepare revenue reports, reconcile accounting ledgers to bank statements, maintain and serve as custodian of trust accounts and perform such other accounting duties as assigned by the court executive;

(M) keep a record of court exhibits and ensure the safekeeping of exhibits;

(N) supervise such deputy clerks as required to perform the duties specified in this rule;

(O) keep such other records and perform such other duties as assigned by the court executive in accordance with applicable law and the provisions of this Code.

(Amended effective November 1, 1996.)

Rule 4-504. Written orders, judgments and decrees.

(7) All judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court. Orders not constituting judgments or decrees may be made a part of the documents containing the stipulation or motion upon which the order is based.

APPENDIX I

Utah Code of Judicial Conduct

CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

CANON 2

A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

A. A judge shall respect and comply with the law and should exhibit conduct that promotes public confidence in the integrity and impartiality of the judiciary.

B. A judge shall not allow family, social, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of the judicial office to advance the private interests of others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness but may provide honest references in the regular course of business or social life.

C. A judge shall not belong to any organization, other than a religious organization, which practices invidious discrimination on the basis of race, sex, religion, or national origin.

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY.

A. Judicial Duties in General. The judicial duties of a full-time judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required or permitted by rule, or transfer to another court occurs.

(2) A judge shall apply the law and maintain professional competence. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge should maintain order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court offi-

cials, and others subject to judicial direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and should not permit, and shall use all reasonable efforts to deter, staff, court officials and others subject to judicial direction and control from doing so. A judge should be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge should require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Canon does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law. Except as authorized by law, a judge shall neither initiate nor consider, and shall discourage, ex parte or other communications concerning a pending or impending proceeding. A judge may consult with the court personnel whose function is to aid the judge in carrying

out the judge's adjudicative responsibilities or with other judges provided that the judge does not abrogate the responsibility to personally decide the case pending before the court. No communication respecting a pending or impending proceeding shall occur between the trial judge and an appellate court unless a copy of any written communication or the substance of any oral communication is provided to all parties. A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the court if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. A judge may, with the consent of the parties either in writing or on the record, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. A judge should require similar abstention on the part of court personnel subject to judicial direction and control. This Canon does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court. This Canon does not apply to proceedings in which a judge is a litigant in a personal

capacity.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for purposes unrelated to judicial duties, information acquired in a judicial capacity that is not available to the public.

(12) A judge should prohibit broadcasting, televising, or recording in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record, or for other purposes of judicial administration; or

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

(13) A judge should prohibit taking photographs (including motion picture and videotape) in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that still photographs of the judge and other court personnel, counsel, spectators, parties and witnesses are permissible, subject to restrictions specified by the court and subject, in the case of parties and

witnesses, to their advance consent in writing, provided that the court shall specifically forbid the taking of any photographs where it finds a substantial likelihood that such activity would jeopardize a fair hearing or trial in the matter at issue.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and cooperate with other judges and court officials in the administration of court business.

(2) A judge should require staff, court officials and others subject to judicial direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments, shall exercise the power of appointment impartially and on the basis of merit, and shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

D. Disciplinary Responsibilities. A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware. This section does not apply to information generated and communicated under the policies of the Judicial Performance Evaluation Program.

E. Disqualification.

(1) A judge shall enter a disqualification in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, a strong personal bias involving an issue in a case, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge had served as a lawyer in the matter in controversy, had practiced law with a lawyer who had served in the matter at the time of their association, or the judge or such lawyer has been a material witness concerning it;

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than de minimis interest that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and should make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Canon 3E may disclose the basis of the judge's disqualification and ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge need not be disqualified, and the judge is then willing to

participate, the judge may participate in the proceeding. The agreement shall be entered on the record, or if written, filed in the case file.

CANON 4

A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS.

A. Extra-judicial Activities in General. A judge shall conduct the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) demean the judicial office;

(3) interfere with the proper performance of judicial duties; or

(4) exploit the judge's judicial position.

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal topics subject to the requirements of this Code.

C. Governmental, Civic, or Charitable Activities.

(1) (a) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal

system, or the administration of justice, or except when acting pro se in a matter involving the judge or the judge's interests.

(b) A judge shall not use the judge's judicial office or title to influence a legislative or executive body or official for the judge or the judge's interest.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency, which may include a constitutional revision commission, devoted to the improvement of the law, the legal system or the administration of justice, or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations:

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization will be frequently engaged in adversary proceedings before any court.

(b) A judge, as an officer, director, trustee or non-legal advisor, or as a member or

otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism, except as permitted in Canon 4C(3)(b)(i);

(iv) shall not use or permit the use of the prestige of the judicial office for fund-raising or membership solicitation;

(v) shall not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position; or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

(3) [Reserved.]

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest those investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and should urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except for:

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident

to the non- judicial business or profession of a part-time judge or the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge, provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend for a special occasion, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Canon 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;

(h) [Reserved.]

E. Fiduciary Activities.

(1) A judge shall not serve as executor,

administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

H. Compensation and Reimbursement.

(1) A judge may receive compensation and reimbursement of expenses for extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of

influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person of like education and expertise who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(c) A judge should not receive compensation for performing a marriage ceremony at the court during regular court hours. A judge may receive compensation for performing a marriage ceremony during non-court hours.

(2) [Reserved.]

I. [Reserved.]

CANON 5

A JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO THE JUDICIAL OFFICE.

A. A candidate for selection by a judicial nominating commission shall not engage in political activities that would jeopardize the confidence of the public or of governmental officials in the political impartiality of the judicial branch of government. A candidate for selection to a judicial office shall not:

(1) misrepresent the candidate's identity, qualifications, present position, education, prior experience or any other fact;

(2) make promises or pledges of conduct in office other than the faithful, impartial and diligent performance of judicial duties; or

(3) seek support or invite opposition to the candidacy because of membership in a political party.

B. A judge or a candidate for a judicial office who has been confirmed by the Senate shall not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(3) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings or purchase tickets for political party dinners or other functions, except as authorized in Canon 5C; or

(4) take a public position on a non-partisan political issue which would jeopardize the confidence of the public in the impartiality of the judicial system.

C. If a candidate for judicial office in a retention election or reappointment process has drawn active public opposition, the candidate may

operate a campaign for office subject to the following limitations:

(1) The candidate shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office or misrepresent the candidate's identity, qualifications, present position, or other facts.

(2) The candidate shall not directly solicit or accept campaign funds or solicit publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support. Committees may solicit campaign contributions and public support from lawyers but must inform lawyers that their contribution or lack of contribution will not be known to the judge or candidate. Committees must not permit the use of campaign contributions for the private benefit of the judge or members of the judge's family.

(3) The candidate may speak to public gatherings on the candidate's own behalf.

(4) A candidate may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Canon 5C(1).

D. Judges and candidates for judicial office:

(1) should maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the

judiciary, and should encourage members of the judge's or candidate's family to adhere to the same standards of political conduct in support of the judge or candidate as apply to the judge or candidate;

(2) should discourage employees or officials subject to the judge's or candidate's direction and control from doing on the judge's or candidate's behalf what the judge or candidate is prohibited from doing under this Canon; and

(3) except to the extent permitted by Canon 5C(2), shall neither request nor encourage, and should not knowingly permit, any other person to do for the judge or candidate what the judge or candidate is prohibited from doing under this Canon.

E. A judge shall resign from judicial office upon becoming a candidate for non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention.

F. A lawyer who is an unsuccessful candidate for judicial office is subject to lawyer discipline for violations of this Canon pursuant to Rule of Professional Conduct 8.2.

APPLICABILITY

A. Part-time Justice Court Judges. A part-time justice court judge:

(1) is not required to comply with Canons 4C(1)(a), 4C(2), 4E, 4F, and 4G; and

(2) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of that court, or act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

B. Judges Pro Tempore. A judge pro tempore shall comply with Canons 1, 2A, 3B, 3E, and 3F. A judge pro tempore appointed pursuant to ^U 78-6-1.5 shall not practice law in the same small claims division in which the judge serves.

C. Court Commissioners. A court commissioner is subject to this Code to the same extent as a full-time judge.

D. Active Senior Judges. An active senior judge is not required to comply with Canon 4F.

E. Senior Judges. A senior judge is not required to comply with the provisions of this Code.